HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.602 of 2010

JUDGMENT:

The injured claimant, who claimed as a student of 7th class maintained MVOP No.1298 of 2007 against the owner and insurer of the auto bearing No.AP 7Y 1046, for a compensation of Rs.1,25,000/-, under Sections 140, 163-A and 166 of the Motor Vehicles Act (for short 'the Act'), with contentions that the claim to be considered under Section 163-A of the Act from the manner of accident is in the auto of 3+1 capacity, there are 7 persons travelling including the injured; the tribunal held that in the absence of showing overloading contributed to the accident, the auto driver's negligence in auto turned turtle for lost control cannot be over-ruled, apart from claim is under Section 163-A of the Act. However, saying the driver has no transport license but non-transport light motor vehicle license as per the evidence of RW.1 and Ex.B2 in exonerating the insurer and fixing liability on the owner by granting compensation of Rs.75,000/- with interest at 7.5% p.a. by taking 10% disability into consideration vide award dated 27.08.2009. It is impugning the same, present appeal is filed.

2. Heard the learned counsel for the claimant and Sri P.Veera Reddy, learned Standing Counsel for the respondent/insurer. Perused the material on record.

3. The driver of the auto has possessed light motor vehicle-non-transport license but not a transport license. Hence, it is not a fit case of total exoneration of the insurer but for to pay and recovery vide National Insurance Company Limited v. Swaran Singh[1] and S.Iyyappan v. United India Insurance Company[2].

4. Accordingly, the appeal is partly allowed, while upholding the quantum and rate of interest, the exoneration of the insurer is set aside by fixing liability of pay and recovery, with the following directions:

The insurer shall deposit said amount within one month from the date of receipt of a copy of this order, failing which the claimant can execute and recover. It is made clear from the settled expressions of the Apex Court in United India Insurance Co. Ltd. V. Lehru[3] and *Oriental Insurance Company Limited Vs. Nanjappan*[4] that the insurer is entitled, while depositing the amounts payable, if not deposited or paid any amount so far to deposit the balance

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[1] (2004) 3 SCC 297=2004-ACJ-1
[2] (2013) 7 SCC 62
[3] JT-2003(2) SC 595 = 2003 ACJ 611
[4] (2004) 13 SCC 224=2004-SAR(civil)-290

amount to approach the tribunal to direct the RTA concerned not to register any transfer of the crime vehicle and to seek for attachment of the crime vehicle or other property of the insured as an assurance for execution and recovery in the same proceedings or under revenue recovery as per the Motor Vehicles Act, 1988, and also ask the tribunal not to disburse the deposited amount of the claimant (but for to invest in a bank) till such attachment order is made. However, after the same, the tribunal shall not withhold the amount of the claimant, if there is any necessity to permit for any withdrawals but for to invest the respective balance amount separately in fixed deposit in a nationalized bank. Rest of the terms of the award of the Tribunal holds good. There is no order as to costs.

5. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

Date:07.12.2016
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